

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS,

No. C 10-4320 WHA (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

THE UNITED STATES, et al.,

Defendants.


This is a civil rights action filed pro se by a prisoner. On September 24, 2010, the clerk notified plaintiff that he had neither paid the filing fee nor filed an application to proceed in forma pauperis ("IFP"). Along with the notice, the clerk mailed to plaintiff the court's IFP forms, instructions for completing the forms, and a stamped return envelope. In the notice, plaintiff was informed that the case would be dismissed if he did not either pay the fee or file a completed IFP application within thirty days. The instructions indicated that in order to complete the IFP forms, plaintiff would have to return a certificate of funds completed by a prison official and a copy of his prisoner trust account statement, in accordance with Section 1915(a)(2). *See* 28 U.S.C. 1915(a)(2). On October 22, 2010, plaintiff filed an IFP application, but the certificate of funds form was not completed and plaintiff did not include a copy of his trust account statement, as he had been instructed to do. Instead, plaintiff attached to his IFP application a notice from prison officials indicating that plaintiff had not followed the proper procedure for obtaining these documents. Plaintiff includes no explanation for his failure to do

1 so, nor has he submitted the completed certificate of funds form and trust account statement
2 necessary to complete his IFP application. As plaintiff has neither paid the filing fee nor filed
3 an IFP application within the allotted time, and has not explained his failure to do so, this case
4 is **DISMISSED** without prejudice. *See* Fed. R.Civ.P. 41(b). The incomplete IFP application
5 (docket number 3) is **DENIED** .

6 The clerk shall close the file.

7 **IT IS SO ORDERED.**

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9 Dated: October 28, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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